SUPREME COURT, U. S.

FILED

OCT 25 1973

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-276

NORMAN A. LANDRY,
Petitioner

v.

HEMPHILL, NOYES & CO.,
WALTER WINCHESTER,
PHILIP J. MURPHY,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITIONER'S MOTION FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF
AND
SUPPLEMENTAL BRIEF

Norman A. Landry
2 Fairchild Drive
Holden, Massachusetts 01520

Pro se for Petitioner

PETITIONER'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

Petitioner respectfully request this Court to grant petitioner's motion for leave to file supplemental brief.

Petitioner's reason for this motion is that petitioner is pro se and through further research has uncovered material which is extremely vital for the just determination of petitioner's petition as said supplemental brief indicates the errors of facts and law of the court below and petitioner wishes to have this material deemed a part of the petition for certiorari.

This Court has not yet acted upon my petition for a writ of certiorari.

Respectfully submitted,

Norman A. Landry
2 Fairchild Drive
Holden, Massachusetts 01520

Pro se for Petitioner

SUPPLEMENTAL BRIEF

Petitioner wishes to supplement his petition for writ of certiorari by adding the following under the heading:
QUESTIONS PRESENTED

28. Whether or not it was proper for the Court of Appeals to deny appellant-petitioner's request that an order be issued directing the District Court to enter a judgement notwithstanding the verdict in favor of appellant-petitioner in regards to the churning claim.

Petitioner wishes to supplement his petition for writ of certiorari, under the heading, "Reasons for Granting the Writ" by adding the following under the heading:
THERE IS EVIDENCE THAT THERE WAS A CONSPIRACY TO DENY PETITIONER A JUST, SPEEDY AND INEXPENSIVE DETERMINATION OF HIS ACTION (OBSTRUCTION OF JUSTICE) WHICH DENIED PETITIONER DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT

Plaintiff-Petitioner's complaint alleged that the defendants violated Section 10(b) of the Securities Exchange Act of 1934 by engaging in

excessive trading in plaintiff-petitioner's account (Churning)(A. 69-70)* (Tr. 16-7-8) which resulted in huge trading losses to plaintiff-petitioner for which he was obliged to pay huge commissions to defendants.

Plaintiff-Petitioner's complaint states (A. 72-3)(Tr. 21)(An excerpt)(Emphasis added):

"Wherefore plaintiff demands:
(1) That plaintiff have judgement against defendants jointly and severally, in the sum of one hundred thousand two hundred seventy-nine dollars ($100,279) and such other amounts as the Court shall determine, plus interest, and;
(2) that plaintiff have judgement against the defendants for costs, including reasonable attorneys fees".

Plaintiff-Petitioner's, "Trial Brief", states (A. 216), "PLAINTIFF IS ENTITLED TO RELIEF FOR THE CHURNING OF HIS ACCOUNT".

---

* Record references in this supplemental brief are as follows:
A.- Appendix to pleadings, etc. before the Court of Appeals and transmitted to this Court.
Tr.- Trial transcript before the Court of Appeals and transmitted to this Court - Bound in two (2) seperate volumes.
Pl. Ex.-Plaintiff's Exhibits before the Court of Appeals and transmitted to this Court.
Pet.- Petition for writ of certiorari filed with this Court

An excerpt from said, "Trial Brief", (A. 217)(emphasis added):

"In the case before the Court the brokers that handled plaintiff's account were employed by the defendant company. The plaintiff submits that a brokerage house which employs and controls a broker who violates the Exchange Act is liable jointly and severally with and to the same extent as the broker, etc."

Plaintiff-Petitioner's requested instructions were filed with the District Court (Tr. 1060)(A. 14) and request number 4, 5 and 6 states the following (A. 236):

4. The churning of the plaintiff's account by the defendant, Hemphill Noyes & Co. resulted in a loss to the plaintiff of all the commissions paid by the plaintiff to the defendant corporation.

5. The churning of the plaintiff's account by the defendant, Philip J. Murphy, resulted in a loss to the plaintiff of all the commissions paid to defendant Hemphill Noyes.

6. The churning of the plaintiff's account by the defendant, Walter Winchester, resulted in a loss to the plaintiff of all the commissions paid by the plaintiff to Hemphill Noyes.

The above requested instructions would have made the defendants liable jointly and severally to the same extent in conformity to Section 20(a) of the Securities Exchange Act of 1934 (Appendix E to Pet., Page 132).

The District Court stated in regards to petitioner's requested instructions (Tr. 1061)(emphasis added):

"4, 5 and 6 I will not give. They talk in terms of really a directed verdict".

A timely objection was made, at the trial (Tr. 1158), to the denial of the requested instructions which included among them, number 4, 5 and 6.

The jury found by a preponderance of evidence, that defendants were guilty of churning plaintiff-petitioner's account and found $5,000 against defendant Hemphill, Noyes & Co., $1,000 against defendant Winchester and $500 against defendant Murphy (Tr. 1162-3) (A. 14, 239-241).

On the last day of the trial, petitioner's trial attorneys filed a motion to withdraw and the District Court (Tr. 1164-5) stated that inasmuch as counsel have a lien in this case, the Court took no action and filed the motion until further notice.

The day following the trial, Mar. 11, 1971, plaintiff-petitioner's trial attorneys sent a letter to plaintiff-petitioner which states as follows:

"This office will not file either a motion for a new trial or take an appeal on your behalf. This letter is also notice to you that we have a lien for services on the total amount of the judgement and interest accrued on said judgement. The amount of our lien is one-third of the total interest plus cost".

Plaintiff-Petitioner sent a copy of this letter to District Judge Garrity on Mar. 19, 1971.

A copy of this letter is attached to a motion which petitioner filed with the Court of Appeals on June 14, 1971 and said letter is designated as Exhibit CR-2. The records have been transmitted to this Court.

On March 19, 1971, plaintiff-petitioner sent a letter to District Judge Garrity which states:

"I want to call your attention to the copy of the enclosed letter that I have received from my counsel.
Although you declined to permit them to withdraw from the case, they refused to represent me during the critical ten day period following judgement".

"As you know, I am not satisfied with the judgement or with the materials which went to the jury, I have attempted to retain other counsel but I have been informed that without a transcript it would be impossible to have counsel unfamiliar with the case to effectively vindicate my rights in the ten day period allowed by the Rules. I have asked counsel whom I have consulted to write a letter to you on this matter".

A copy of this letter is attached to a motion which petitioner filed with the Court of Appeals on June 14, 1971 and said letter is designated as Exhibit CR-1. The records have been transmitted to this Court.

A letter was sent to District Judge Garrity, on March 22, 1971, which letter states, in essence (in part) that the court, in these circumstances can be expected to do what it can to protect plaintiff's rights and the letter cites a case where judgement n.o.v. was entered for a party whose counsel had sought a directed verdict at trial but did not file a j.n.o.v. motion after entry of judgement. This letter has been transmited to this Court.

On April 20, 1971, (A. 15) a hearing was held in District Court in regards to defendants motion for judgement notwithstanding the verdict on plaintiff's churning claim.

Plaintiff-Petitioner's trial attorneys

* FIRST SAFE DEPOSIT NAT'L BANK V. WESTERN UNION TEL. Co. 337 F.2d 743 (1ST CIR. 1964) mal

never filed any written response to defendants motion, even though plaintiff-petitioner had requested (by letter) that they do so.

At said hearing there was no Court Stenographer present. (In plaintiff's case there had been a pretrial hearing where the Court Stenographer transcribed the conversations and subsequently, plaintiff-petitioner would be informed by the Court Stenographer that she had no notes, which required that plaintiff-petitioner file with the District Court a record of the proceedings (A. 212a, 212g, 16a) - One day during the trial, the plaintiff-petitioner had employed a girl to take down some notes of the testimony (Tr. 717-9) and the District Court ordered that she turn said notes over to the court. Plaintiff-Petitioner never got the notes back).

At said hearing in regards to the churning issue, plaintiff-petitioner took down notes of the conversation and they have become part of the record (A. 16a, 250a-250e).

As indicated by the record (A. 250d), the District Court had reservations as to whether the liability of the $6,500 on the churning claim should be jointly or severally.

The day following the hearing, the District Court (A. 15) allowed defendants motion for judgement notwithstanding the verdict on churning claim and dismissed the charges of churning claim against all of the defendants (A. 251-2-3).

On April 21, 1971, the plaintiff-petitioner sent a letter to District Judge Garrity which informed the Judge that plaintiff's trial attorneys have refused to order the trial transcripts and requested the District Judge to direct the Official Court Reporter to give plaintiff the transcripts. The District Judge did not order the transcripts for the plaintiff.

A copy of this letter is attached to a motion which petitioner filed with the Court of Appeals on June 14, 1971 and said letter is designated as Exhibit CR-3. The records have been transmitted to this Court.

Petitioner filed an appeal, pro se, with the Court of Appeals (A. 254-5) and subsequently filed a brief and in said brief, petitioner discussed the churning issue on Page 75-78 and in Reply Brief on Page 12-15 and petitioner informed the Court of Appeals of Section 20(a) of the Securities Exchange Act of 1934. Said briefs have been transmitted to this Court.

Petitioner's brief which was filed with the Court of Appeals, discusses churning on Page 100 and the Conclusion on Page 101 requested the Court of Appeals to order the District Court to enter judgement notwithstanding the verdict in favor of plaintiff-petitioner.

The Court of Appeals rejected petitioner's request and upheld the actions of the District Court.

Appellant-Petitioner filed a petition for rehearing with the Court of Appeals (Appendix C to Pet., Page 106) and in said petition, appellant-petitioner again referred the Court of Appeals (Pet. 121-2) to Section 20(a) of the Securities Exchange Act of 1934.

In the case of Hecht v. Harris, Upham & Co., C.A.Cal. 1970, 430 F.2d 1202 (9th Cir. 1970), the Court stated, "Where a single fraudulent scheme based on excessive churning of customer's account involve both securities and commodities, court was entitled to award damages for entire loss".

In the Hecht v. Harris, Upham & Co., 283 F.Supp. 418-9, the Court stated, "Churning" involves bad faith, fraudulent purpose of securities broker to derive profit for himself by disregarding interest of his customer is "manipulative device or contrivance" within Securities Act and is "device to defraud" and practice and course of business which operates as or would operate as fraud and deception within Securities Exchange Commission Rule proscribing engaging in practice or course of business which operates as or would operate as fraud on any person in connection with purchase or sale of securities. Securities Exchange Act of 1934, Section 10(b), 15 U.S.C.A. § 78j(b)."

The District Court denied (Tr. 1061) plaintiff-petitioner's request for a directed verdict on churning issue.

The District Court refused to instruct the jury on plaintiff-petitioner's requested instructions on churning issue which would have had the effect of making the defendants liable jointly and severally to the same extent in conformity with Section 20(a) of the Securities Exchange Act of 1934. A timely objection was made, at the trial, to the District Court's ruling (Tr. 1158).

The District Court erred in not directing a directed verdict in favor of plaintiff-petitioner on the churning issue.

The jury by a preponderance of evidence found the defendants guilty of churning plaintiff-petitioner's account.

Although the District Court did not allow petitioner's trial attorneys to withdraw, petitioner's attorneys refused to represent petitioner during the critical ten day period following judgement and therefore the petitioner had nobody to vindicate his rights.

The District Court was informed of this matter.

The District Court was informed of a case where judgement notwithstanding the verdict was entered for a party whose counsel sought

a directed verdict at trial but did not file judgement notwithstanding the verdict motion after entry of judgement. Letter transmitted to this Court.

The District Court erred in not entering judgement notwithstanding the verdict in favor of plaintiff-petitioner.

The petitioner requested the Court of Appeals to direct an entry of judgement notwithstanding the verdict on churning claim (Brief before the Court of Appeals, transmitted to this Court, Page 100-1) which resulted in defendants willfully violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder and that the defendants be hel jointly and severally to the same extent for damages which includes payment of commissions and trading losses.

THE DISTRICT COURT SHOULD HAVE GRANTED PETITIONER'S REQUEST FOR A DIRECTED VERDICT ON CHURNING CLAIM. THE JURY FOUND BY A PREPONDERANCE OF EVIDENCE THAT THE DEFENDANTS WERE GUILTY OF CHURNING PETITIONER'S ACCOUNT AND THE DISTRICT COURT SHOULD HAVE ENTERED JUDGEMENT NOTWITHSTANDING THE VERDICT ON PLAINTIFF-PETITIONER'S BEHALF AND THE COURT OF APPEALS ERRED IN NOT GRANTING PETITIONER'S REQUEST FOR A JUDGEMENT NOTWITHSTANDING THE VERDICT BECAUSE AS A MATTER OF LAW, THE DEFENDANTS ARE LIABLE JOINTLY AND SEVERALLY TO THE SAME EXTENT FOR CHURNING PETITIONER'S ACCOUNT (SECTION 20(a) OF THE SECURITIES EXCHANGE ACT OF 1934 - See Pet. 132).

The Court of Appeals in their opinion is in error as to the facts and law.

The Court of Appeals, in regards to the Churning claim state (Pet., Appendix A, Page 100)(An excerpt)(Emphasis added);

"It was uncontroverted that Landry received confirmation slips and monthly statements from Hemphill, Noyes setting forth the full details of every transaction entered, and that with one minor exception relating to a mistaken transaction in April 1963, he at no time registered any complaints with the defendants concerning the manner in which his account was being handled"

Facts - The confirmation slips has language to the effect that transactions are subject to the rules of the New York Stock Exchange and the broker agrees to comply with the Rules of the New York Stock Exchange (Tr. 713).

Defendant Murphy testified (Tr. 903-4) to securities transactions that he effected in plaintiff's account when he was not a registered representative, all with the approval of defendant Winchester (Tr. 700).

Plaintiff testified (Tr. 84) that defendant Murphy never indicated to plaintiff that Murphy wasn't a registered representative.

Therefore, the defendants never gave the full details of every transaction

as the defendants never informed the plaintiff that they were willfully flagrantly violating Rules of the New York Stock Exchange. This acted as a fraud upon the plaintiff which resulted in defendants violation the Federal securities laws (anti-fraud provisions)

The confirmation slips and monthly statements showed certain securities transactions that were being effected by the defendants as long sales and Mr. Joseph Shwartz, from the United States Securities and Exchange Commission, testified (Tr. 459) that this was a violation as the defendants should have effected and treated said transactions as short sales.

Therefore, the defendants never gave the full details of every transaction, as the defendants never informed the plaintiff that the defendants were violating the Federal securities laws and Rules promulgated thereunder, as a result of defendants effecting securities transactions as long sales when defendants should have been effecting said transactions as short sales.

The defendants were effecting securities transactions in plaintiff's account and over extending credit in plaintiff's account and the defendants never informed plaintiff that defendants were extending credit to the plaintiff in excess of the limits permitted by the Federal securities laws.

Therefore, the defendants never gave the full details of every transaction entered.

Numerous other examples can be cited, but it is clear that the defendants never gave the full details of every transaction entered.

Plaintiff testified (Tr. 257, 265, 360), that he complained about two weeks after he got out of the hospital in June or July of 1963 and again through a letter of complaint on May 18, 1964 (Tr. 339-340)(A. 179). Defendant Murphy testified that plaintiff complained in May 1964 (Tr. 978, 985).

Therefore, the Court of Appeals, in their opinion, was in error when they stated that there was only one complaint that was made by the plaintiff.

The Court of Appeals (Pet., Appendix A, on the bottom of Page 101) indicates some sort of rule or formula to determine churning.

In the case of Hecht v. Harris, Upham & Co. 283 F.Supp. 419 the Court stated:

"Churning cannot be established by precise rule or formula, and essential question of fact for determination is whether volume and frequency of transactions, considered in light of account and situation and needs and objectives of customer, have been so excessive as to indicate purpose of broker to derive profit for himself while disregarding interest of customer".

The Court of Appeals state, in their opinion (Pet., Appendix A, Page 102) (An excerpt):

"Instead, the jury was merely presented with the raw data concerning plaintiff's transactions, and then asked to conclude that the trading in his account had been "excessive".

Facts - There was a preponderance of evidence that the defendants operated in bad faith.

To have allowed defendant Murphy to effect securities transactions in plaintiff's account and to receive commissions when he was not a registered representative, all with the approval of defendants Winchester and Hemphill, Noyes, all in violation of the Rules of the New York Stock Exchange, indicates crystal clear

that the defendants purpose was to derive profits for themselves while disregarding the interest of the plaintiff.

The first transaction that defendant Murphy effected in plaintiff's account was the purchase of Southern Pacific Railroad. Mr. Shwartz, from the S.E.C., testified (Tr. 411-2-3) that there was a violation of Regulation T. Defendant Murphy testified (Tr. 903-4) that he was not a registered representative when he effected this transaction in plaintiff's account.

Defendant Murphy was effecting securities transactions on margin in plaintiff's account when he was not a registered representative. Mr. Shwartz, from the S.E.C. testified (Tr. 420-1-2) that there was a violation of Regulation T as a result of the purchase of Chadbourn-Gotham in plaintiff's margin account and that there was a violation of Regulation T as a result of the purchase of Dayco Corporation in plaintiff's margin account (Tr. 424-5-6). Defendant Murphy testified (Tr. 903-4) that he effected these transactions in plaintiff's account when he was not a registered representative.

There was a preponderance of evidence by Mr. Shwartz, from the S.E.C., of numerous other transactions which resulted in violations of over extentions of credit.

Defendant Murphy would purchase a security in plaintiff's account and then would sell the same security the following day, and then defendant Murphy would inform the plaintiff that this was done to protect his account (Tr. 266-7).

Defendant Winchester testified (Tr. 862) that even though he knew that plaintiff's account was under margin, defendants made a purchase in plaintiff's account.

Plaintiff testified (Tr. 89-90), that the securities that he had owned that he hadn't given to the defendants, plaintiff still has the same securities.

Plaintiff testified (Tr. 187) that his salary had a range of fifteen to twenty five thousand during the period 1962-1964.

Defendant Winchester testified (Tr. 601-2) that from 1957 to 1962 there were five to six

transactions in plaintiff's account.

There was uncontroverted testimony by the plaintiff (Tr. 146) that from January of 1962 to the end of May 1964 the total transactions amounted to one million two hundred thousand or one million two hundred and ten thousand.

Defendant Murphy testified (Tr. 964), that he didn't make any inquiries as to plaintiff's financial position and that defendant Murphy didn't have any idea of how much money the plaintiff could lose.

Transactions would never have occured in plaintiff's account if the defendants had scrupulously observed the Federal securities laws and New York Stock Exchange Rules.

The jury found by a preponderance of evidence that the defendants were guilty of churning plaintiff's account.

The Court of Appeals should have granted petitioner's request for judgement notwithstanding the verdict to be entered in District Court in accordance with Section 20(a) of the Securities Exchange Act of 1934.

Defendant Winchester testified (Tr. 639-640) that everybody in the office were under his control and under his suprevision at all times (emphasis added).

Section 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78t, 48 Stat. 899 states (emphasis added):

Liabilities of Controlling Persons
Section 20(a) Every person who, directly or indirectly, controls any person liable under any provision of this title or any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

THE DISTRICT COURT SHOULD HAVE GRANTED PLAINTIFF-PETITIONER'S REQUEST FOR A DIRECTED VERDICT ON CHURNING CLAIM AS THERE WAS A PREPONDERANCE OF EVIDENCE THAT DEFENDANTS CHURNED THE ACCOUNT AND ACTED IN BAD FAITH AND THEREFORE WERE LIABLE JOINTLY AND SEVERALLY TO THE SAME EXTENT.

THE JURY FOUND THE DEFENDANTS GUILTY OF CHURNING PLAINTIFF-PETITIONER'S ACCOUNT BUT THE DISTRICT COURT DID NOT INSTRUCT THE JURY THAT AS A MATTER OF LAW THE DEFENDANTS WERE LIABLE JOINTLY AND SEVERALLY TO THE SAME EXTENT.

THE DISTRICT COURT SHOULD HAVE ENTERED JUDGEMENT NOTWITHSTANDING THE VERDICT ON CHURNING CLAIM IN BEHALF OF PLAINTIFF-PETITIONER.

THE COURT OF APPEALS ERRED IN NOT GRANTING APPELLANT-PETITIONER'S REQUEST THAT THE COURT OF APPEALS ORDER THE DISTRICT COURT TO ENTER JUDGEMENT NOTWITHSTANDING THE VERDICT, BECAUSE AS A MATTER OF LAW, THE DEFENDANTS WERE LIABLE JOINTLY AND SEVERALLY TO THE SAME EXTENT FOR CHURNING PLAINTIFF-PETITIONER'S ACCOUNT.

During the trial, Defendants' Exhibit R, "Margin Agreement" was placed in evidence and read to the jury (Tr. 221).

Said Exhibit R states (in part)(emphasis added), " that all transactions shall be subject to the constitution, rules, charter, by-laws and usages of the exchange or market, and its clearing house, if any, where the transactions are effected."

On July 8, 1968 (A. 8) plaintiff-petitioner filed with the District Court, "Plaintiff's Answer To Counterclaim of Defendant Hemphill, Noyes & Co.". In said Answer plaintiff stated (among other matters)(emphasis added): "Plaintiff says that the margin agreement, attached as Exhibit "A" to Defendants' Answer and Counterclaim, was violated by Hemphill, Noyes & Co. as early as August 6, 1962". The District Court, over two years later, on Sept. 28, 1970 (A. 9) at a hearing that was held, allowed defendants-respondents motion to strike plaintiff-petitioner's Answer (Transcript transmitted to this Court, Page 23-4-5). Appellant-Petitioner's Reply Brief filed with the Court of Appeals and transmitted to this Court contains the above matter on Page 9.

Plaintiff's Exhibit 8-A which was in evidence (Tr. 74) indicates that there was a purchase of Kerr McGee Oil with a trade date of August 6, 1962 and a settlement date of August 10, 1962. Plaintiff testified (Tr. 82-3) that defendant Murphy effected this transaction in plaintiff's margin account (emphasis added). Defendant Murphy testified (Tr. 903) (emphasis added) that he effected said transaction in petitioner's account when he was not a registered representative.

Petitioner states that the evidence is crystal clear that defendant Murphy effected the securities transaction on Aug. 6, 1962 when he was not a registered representative in violation of New York Stock Exchange Rules and the terms stated in the "Margin Agreement" which states (in essence) that all transactions shall be subject to the rules of the exchange. In accordance with Section 29(b) of the Securities Exchange Act of 1934 the transaction is void and that the continuance of any relationship or practice in violation of, any provision of this title or any rule or regulation thereunder shall be void (Pet. 133) (Tr. 410-411)

Mr. Joseph Shwartz, from the United States Securities and Exchange Commission, testified (Tr. 419-421) that in August 24, 1962 there was a transaction in plaintiff's margin account of 200 shares of Chadbourne-Gotham where there was a violation of Regulation T.

Defendant Murphy testified (Tr. 903-4) that he effected the transaction of 200 Chadbourne-Gotham August 24th in petitioner's account when he was not a registered representative. (emphasis added)

Plaintiff-Petitioner's trial attorneys had complete knowledge that this transaction subsequently resulted in a loss to the plaintiff and yet, plaintiff-petitioner's trial attorneys never illicited any testimony, before the jury, from Mr. Staiti or from Mr. Lanigan, as to the monetary loss of the Regulation T violation, over extention of credit, on Chadbourne-Gotham transaction.

Plaintiff testified (Tr. 90-1), using chalk (Pl. Ex. 11-A) where Chadbourne-Gotham was purchased and sold and how the loss was computed (Tr. 147) but plaintiff did not testify to the dollar amount of the loss.

There was a loss registered in plaintiff's account as a result of the transactions in Chadbourn-Gotham of $871.22, See Plaintiff's Exhibit 11-C for Identification, Item 123 and also Plaintiff's Exhibit 4-I and 6-K1 which were in evidence (Tr. 73).

The District Court erred by refusing to submit to the jury a seperate claim form with respect to a general allegation that there were fraudulent practices perpetrated by the defendants against plaintiff prohibited by Section 10(b) (Tr. 1049-1050-1054).

The District Court erred when the District Court stated that one of the reasons why He would not submit a seperate 10(b) claim form to the jury was that (Tr. 1052)(emphasis added) there were no losses shown when defendant Murphy was effecting securities transactions in plaintiff's account when defendant Murphy was not a registered representative.

The petitioner's, "Reply Brief" which was filed with the Court of Appeals and transmitted to this Court indicates on Page 25, 30 of said brief that there was a loss of $871.22 as a result of Chadbourne-Gotham transaction which defendant Murphy effected in plaintiff's account when defendant Murphy was not a registered representative, contrary to the District Court's statement (Tr. 1052).

Plaintiff's trial attorneys, "Trial Brief" (A. 220) filed with the District Court (A. 14)(Tr. 310), alleges a violation of Regulation T and over extention of credit on Aug. 24, 1962 of Chadbourne-Gotham transaction which violation was confirmed by the testimony of Mr. Shwartz, from the S.E.C. (Tr. 419-421) and defendant Murphy testified (Tr. 903-4) that he effected said transaction in plaintiff's account when he was not a registered representative, and plaintiff's trial attorneys knew that there was a subsequent loss resulting from the transaction and yet, in said attorneys, "Request For Instructions" (A. 236) they do not claim any violation of an over extention of credit on Chadbourne-Gotham of August 24, 1962.

Defendant Murphy testified (Tr. 903-4) that he effected the transaction of 200 Chadbourne-Gotham August 24th in petitioner's account when he was not a registered representative. (emphasis added)

Plaintiff-Petitioner's trial attorneys had complete knowledge that this transaction subsequently resulted in a loss to the plaintiff and yet, plaintiff-petitioner's trial attorneys never illicited any testimony, before the jury, from Mr. Staiti or from Mr. Lanigan, as to the monetary loss of the Regulation T violation, over extention of credit, on Chadbourne-Gotham transaction.

Plaintiff testified (Tr. 90-1), using Chalk (Pl. Ex. 11-A) where Chadbourne-Gotham was purchased and sold and how the loss was computed (Tr. 147) but plaintiff did not testify to the dollar amount of the loss.

There was a loss registered in plaintiff's account as a result of the transactions in Chadbourn-Gotham of $871.22, See Plaintiff's Exhibit 11-C for Identification, Item 123 and also Plaintiff's Exhibit 4-I and 6-K1 which were in evidence (Tr. 73).

The District Court erred by refusing to submit to the jury a seperate claim form with respect to a general allegation that there were fraudulent practices perpetrated by the defendants against plaintiff prohibited by Section 10(b) (Tr. 1049-1050-1054).

The District Court erred when the District Court stated that one of the reasons why He would not submit a seperate 10(b) claim form to the jury was that (Tr. 1052)(emphasis added) there were no losses shown when defendant Murphy was effecting securities transactions in plaintiff's account when defendant Murphy was not a registered representative.

The petitioner's, "Reply Brief" which was filed with the Court of Appeals and transmitted to this Court indicates on Page 25, 30 of said brief that there was a loss of $871.22 as a result of Chadbourne-Gotham transaction which defendant Murphy effected in plaintiff's account when defendant Murphy was not a registered representative, contrary to the District Court's statement (Tr. 1052).

Plaintiff's trial attorneys, "Trial Brief" (A. 220) filed with the District Court (A. 14)(Tr. 310), alleges a violation of Regulation T and over extention of credit on Aug. 24, 1962 of Chadbourne-Gotham transaction which violation was confirmed by the testimony of Mr. Shwartz, from the S.E.C. (Tr. 419-421) and defendant Murphy testified (Tr. 903-4) that he effected said transaction in plaintiff's account when he was not a registered representative, and plaintiff's trial attorneys knew that there was a subsequent loss resulting from the transaction and yet, in said attorneys, "Request For Instructions" (A. 236) they do not claim any violation of an over extention of credit on Chadbourne-Gotham of August 24, 1962.

Plaintiff testified (Tr. 144) in reference to Plaintiff's Chalk Exhibit 11-A and 11-C that the Xerox transaction number 43 had reference to number 131 and that those two transactions went together (Loss of $44,032.90 is indicated on Plaintiff's Chalk Exhibit 11-C, the LOSS column marked for Identification).

Plaintiff informed the District Court (Tr. 668) that there was a loss of $44,000.00 in Xerox.

Mr. Thomas Staiti, Certified Public Accountant (Tr. 511) testified (Tr. 521) that the sale of Xerox on March 18, 1963 went with the purchase of June 1, 1964.

Plaintiff's trial attorneys informed the District Court (Tr. 521-2-3) that said transactions resulted in a loss to the plaintiff of $44,032.90 and that as a result of the order of the District Court (Tr. 1142) as to the manner in which losses were to be computed, the jury was given a figure of $4,850.00. Mr. Staiti testified (Tr. 522) and Mr. Lanigan testified (Tr. 743) that the loss was $4,850.40.

Mr. Staiti testified (Tr. 577-8) that the losses that he presented to the jury were not reflected on plaintiff's monthly statements.

Plaintiff informed the District Court (Tr. 678) that the jury were presented with fictitious losses.

CONCLUSION

For the reasons outlined in this Supplemental Brief, in addition to those expressed in the Petition, Reply Brief, and Memorandums, certiorari should be granted.

This Court has not yet acted upon my petition for a writ of certiorari.

Respectfully submitted

Norman A. Landry
2 Fairchild Drive
Holden, Massachusetts 01520
Pro se For Petitioner